

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7699 of 1997

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN and  
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
  2. To be referred to the Reporter or not? Yes
  3. Whether Their Lordships wish to see the fair copy of the judgement? No
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
  5. Whether it is to be circulated to the Civil Judge? No

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JAGDISHBHAI M KAMALIA

Versus

BHAVNAGAR MUNICIPAL CORP.

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Appearance:

M/S THAKKAR ASSOC. for Petitioners  
MR JR NANAVATI for Respondent No. 1 to 3  
Ms. AMI YAGNIK, AGP, for Respondent No. 4  
MR AR THAKKER for Respondents NoS. 5/1 TO 5/4  
Respondents Nos. 5/5 to 5/9 served  
Respondent No. 6 unserved

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CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and  
MR.JUSTICE A.R.DAVE

Date of decision: 26/03/98

C.A.V. JUDGMENT (Per A.R. Dave, J.)

By way of public interest litigation, the

petitioners who are tax payers and residents of City of Bhavnagar have approached this Court to draw attention of this Court to certain irregularities committed by the respondent authorities in the matter of grant of lease in respect of a plot bearing Survey No. 2557/A situated near Old Talaja Road in the City of Bhavnagar which has resulted into financial loss to Bhavnagar Municipal Corporation. The petitioners have submitted that they are engaged in social as well as cultural activities and they want to see that valuable land belonging to Bhavnagar Municipal Corporation (hereinafter referred to as the Corporation) is not unlawfully or irregularly disposed of in favour of legal heirs of late Shri Vajubha Hathisinh Gohil.

2. The facts giving rise to the petition in a nutshell are as under:-

3. Erstwhile Bhavnagar Municipality (now Bhavnagar Municipal Corporation and referred to hereinafter as the Municipality) wanted to dispose of the plot referred to hereinabove on lease for a period of 99 years and, therefore, an auction was held on 7th November 1951. Along with other three persons, late Shri Vajubha had participated at the said auction and had ultimately given the highest bid of Rs 360/- which was one-time premium to be paid in respect of the lease of the plot in question. Out of the said amount of Rs. 360, 3/4th of the amount, namely, Rs. 270/-, was paid by late Shri Vajubha on 7th November 1951 and the remaining 1/4th of the premium was to be paid by him within one month from 7th November 1951. Original writing executed by late Shri Vajubha reveals that he had further agreed to the effect that, if the remaining amount was not paid within one month from 7th November 1951, it was open to the Municipality to forfeit the amount deposited by him. He had also stated in the said document that possession of the plot in question was to be given to him only upon payment of the entire amount of premium.

3. In spite of the execution of the writing referred to hereinabove, late Shri Vajubha did not make payment of remaining amount of premium within the time prescribed and, therefore, he had given an application to the Standing Committee of the Municipality on 14.2.1952 requesting the Municipality to grant further time of three months for paying the unpaid amount of Rs. 90/- as he was a retired soldier and he was not having sufficient funds to pay the said amount. Thereafter late Shri Vajubha had executed writing in the nature of an undertaking on 14th February 1952 giving an assurance to

the Municipality that the remaining amount of the lease premium would be paid within three months.

4. It appears that the request made by late Shri Vajubha was considered with due sympathy by the Municipality and the said request was granted on 16th February 1952.

5. Though there is no specific evidence to the effect that possession of the plot in question was handed over to late Shri Vajubha, it appears from a letter addressed to him by the Chief Officer of the Municipality that possession of the plot in question might have been given to him.

6. It is not in dispute that in spite of the above-referred undertaking executed by late Shri Vajubha, the remaining amount of the premium was not paid by him as per the undertaking. Thereafter, on 25th July 1996 and 31st July 1996, after about 45 years, late Shri Vajubha had made a request to the Commissioner of Bhavnagar Municipal Corporation to get his name entered in the lease register maintained by the Corporation as name of Shri Vajubha had not been entered in the said register. The said request was rejected by the Corporation under letter dated 26th September 1996. A copy of the communication addressed to late Shri Vajubha is at Annexure F to the petition.

7. In spite of rejection of the above said two applications, the Standing Committee of the Corporation had reconsidered the matter pertaining to entering name of late Shri Vajubha in the lease register on 25.7.1997 and had decided to accept balance amount of the premium payable by late Shri Vajubha and to enter name of late Shri Vajubha in the lease register. It is pertinent to note that there was no reason for the Standing Committee to reconsider the above-referred matter especially when no third application appears to have been received from late Shri Vajubha or his legal heirs. It is also pertinent to note that the subject with regard to entering name of late Shri Vajubha in the lease register was not referred to in the agenda circulated amongst members of the Standing Committee of the Corporation. Some of the members of the Corporation had also subsequently objected to considering the abovereferred subject in the Standing committee especially when the said subject was not referred to in the agenda. The said decision taken by the Standing Committee was ultimately communicated to late Shri Vajubha under order dated 30.7.97, a copy of which has been annexed and marked

Annexure M to the petition.

8. Being aggrieved by the abovestated decision taken by the Corporation, the petitioners have approached this Court to submit that the decision abovereferred to is not in the larger interest of the public for the reasons stated in the petition and, therefore, the said decision taken by the Corporation should be quashed and set aside so that the land in question, which is in fact not validly leased to anyone, can be used for any public purpose.

9. The petitioners have pointed out that late Shri Vajubha or his legal heirs had no right to get name of late Shri Vajubha entered into the lease register as 1/4th amount of the premium was not paid by late Shri Vajubha within the period prescribed by the Municipality. It has been strenuously submitted by Learned Advocate Shri Pahwa appearing for the petitioners that the impugned action of the Corporation is not in the interest of the Corporation. Only with an intention to do undue favour to the legal heirs of late Shri Vajubha, the Corporation has passed the impugned order at the behest of respondent No.3. It has also been submitted that at the behest of some politicians the impugned action has been taken by the Corporation which is not in the interest of the Corporation.

10. Ld. Advocate Shri Pahwa has drawn our attention to a startling fact that immediately after getting the order dated 30th July 1997 passed by the Corporation, legal heirs of late Shri Vajubha had sold their rights in respect of the plot in question to respondent No.6 for a consideration of Rs. 4 lakhs. Whatever right legal heirs of late Shri Vajubha had in the plot in question has been transferred to respondent No.6. A copy of the deed executed by the heirs of late Shri Vajubha in favour of respondent No.6 is placed on record of this Court.

11. Ld. Advocate Shri Pahwa has also submitted that in spite of the fact that value of the plot in question had been increased substantially and late Shri Vajubha had not paid the entire premium payable by him in pursuance of undertakings given by him from time to time and though possession of the plot in question was with the Corporation, only with an intention to do undue favour to the heirs of late Shri Vajubha, at the behest of respondent No.3, who is Chairman of the Standing Committee of the Corporation, the impugned decision was taken by the Corporation.

12. In pursuance of notice issued by this Court, 1d. Advocate Shri J.R. Nanavaty has appeared for respondents Nos. 1, 2 and 3. Learned AGP Ms. Ami Yagnik has appeared for respondent No. 4 and Shri A.R. Thakker has appeared for respondents Nos. 5/1 to 5/4. Respondent No.6 has addressed a letter to the Registrar of this Court stating the fact that he had not received notice of this Court and has made a request in his letter dated 16th February 1998 that his letter should be placed before the Court. Thus, it appears that respondent No.6 is aware of the proceedings but for the reasons best known to him he has neither appeared before the Court nor has engaged any advocate to represent his case. Looking to the facts of the case, with consent of the learned advocates, the matter is finally heard today.

13. Affidavit-in-reply has been filed on behalf of the respondent-Corporation. The Corporation has questioned locus standi of the petitioners. It has been mainly averred in the affidavit-in-reply that possession of the plot in question had already been given to late Shri Vajubha and upon getting an opinion from the lawyer of the Corporation, the Corporation thought it proper not to enter into litigation but to accept balance amount payable by late Shri Vajubha and to enter name of late Shri Vajubha in the lease register maintained by the Corporation. The Corporation has denied allegations pertaining to doing undue favour to late Shri Vajubha or his legal heirs.

14. Upon perusal of the relevant record including some of the original documents executed by late Shri Vajubha and upon hearing the learned advocates, it is crystal clear that, in fact, late Shri Vajubha had not made complete payment of the premium. Though he was supposed to pay remaining amount of lease premium within one month from 7th November 1951, he could not pay the same as per the terms of the auction and therefore he had given some applications for extension of time. The said applications which were made on 14th and 16th February 1952 were granted by the Municipality but in spite of the said fact, late Shri Vajubha had not made payment of the premium within three months from 16th February 1952.

15. Though all the original documents were placed before this Court by learned Advocate Shri J.R. Nanavaty, we could not find any document showing the fact that possession of the land in question was handed over to late Shri Vajubha. Normally a separate document is executed whereby the fact with regard to handing over of the possession is recorded. In the instant case, there

is no such document. Only a reference has been made in one of the letters written by the Chief Officer of the Municipality that late Shri Vajubha was given possession of the plot on a condition that he would make payment of the remaining amount of premium within three months from 16th February 1952. There is no reference to the fact that possession of the plot in question was given on a particular date to late Shri Vajubha. Normally, even if no document is executed, an office note is made in the record stating the fact with regard to handing over of the possession. Upon perusal of the original record, we could not find any such note made by any officer of the Municipality.

16. It is very pertinent to note here that as late Shri Vajubha had not made complete payment of the premium payable by him in respect of lease of the plot in question, name of Shri Vajubha was not entered into lease register as the plot in question was not leased to him. There is no lease deed to support the fact that agreement of lease was entered into between the Corporation and late Shri Vajubha. It appears that late Shri Vajubha was not in actual possession of the plot in question and the plot was lying open. It also appears that in a litigation which the Corporation had with Meenaben Pandya, the Corporation had filed a written statement stating the fact that the land in question belonged to the Corporation and it was in possession of the Corporation. The said suit being Regular Civil Suit No. 30 of 1990 was filed by plaintiff Meenaben Pandya in the court of Learned Civil Judge (S.D.), Bhavnagar, in relation to some unauthorised construction put up on land adjoining plot No.2557/A.

17. As per the facts stated in the petition, possession of the plot in question was with the Corporation and late Shri Vajubha had no right over the plot in question as he had not fulfilled his obligation by paying remaining Rs. 90/- of the premium. In spite of the fact that applications given by late Shri Vajubha for entering his name in the lease register were rejected by the Corporation, against the interest of the Corporation, the Corporation had decided to enter names of legal heirs of late Shri Vajubha in the lease register maintained by the Municipal Corporation by an order dated 30th July 1997. A copy of the said order is annexed and marked Annexure M to the petition.

18. With regard to possession of the plot in question, it appears that either the Municipality had

taken possession from late Shri Vajubha or possession was never given to late Shri Vajubha. If one peruses panchnama drawn by the Estate Officer of the respondent Corporation dated 30th July 1996, it is clear that the plot in question was an open land and there were babul trees standing on the unused plot with heaps of earth. Moreover, upon averments made by the respondent Corporation in Regular Civil Suit No. 30/90, it is clear that the respondent Corporation has stated the fact that the plot in question belonged to the respondent Corporation and was in possession of the Corporation. The said facts clearly reveal that possession of the plot in question at the relevant time was with the respondent Corporation.

19. In the above-referred circumstances, the following facts are evident. Late Shri Vajubha had not paid the entire amount of premium and as there was no agreement of lease, name of late Shri Vajubha was not recorded in the lease register maintained by the Municipality. It was open to the Municipality to forfeit the amount already paid by late Shri Vajubha in the event of his not paying the balance amount within the stipulated period. It is not in dispute that the balance amount was not paid by late Shri Vajubha. So far as possession of the land in question is concerned, from the facts stated hereinabove, it is clear that possession of the plot in question was not with late Shri Vajubha or his legal heirs at the time when applications were given by late Shri Vajubha for entering his name in the lease register maintained by the respondent Corporation.

20. In the above circumstances, what is required to be seen is whether the respondent Corporation acted in a just and proper manner in passing the impugned order dated 30th July 1997, a copy of which is annexed and marked Annexure M to the petition. It is not in dispute that after 1952 late Shri Vajubha did not make any effort to get his name entered in the lease register till he had given applications in July 1996. The plot in question was never used by late Shri Vajubha and he was not having possession of the plot when the application was given in July, 1996. Value of the plot in question has substantially increased in the meantime. Though initially late Shri Vajubha had agreed to pay premium of Rs. 360 for having leasehold rights for 99 years in respect of the land in question, legal heirs of late Shri Vajubha had sold their rights, if any, in respect of the land in question to respondent No. 6 for Rs. 4 lakhs. It is also pertinent to note that two applications of

late Shri Vajubha were rejected by the respondent Corporation and, therefore, one can believe that a final decision was taken for not entering name of late Shri Vajubha in the lease register maintained by the Corporation.

21. In spite of the above-referred facts, the respondent-Corporation took a different decision whereby it accepted the remaining amount of premium. In the impugned order the respondent Corporation has referred to Civil Suit No. 30/90 filed against the respondent Corporation and has observed that the judgment which might be delivered in the said suit would be binding upon late Shri Vajubha. The said fact denotes that the plot in question is also subject-matter of Civil Suit No. 30/90 filed in the court of Civil Judge (S.D.), Bhavnagar. Written statement given by the respondent Corporation clearly reveals that possession of the plot in question was with the respondent Corporation. In spite of the said factual possession, in the impugned order dated 30th July 1997, it has been observed that possession of the plot in question was with late Shri Vajubha.

22. Upon perusal of the relevant record, one can surely come to a conclusion that the respondent Corporation has acted against the interest of the Corporation by passing the impugned order dated 30th July 1997. Members of the Standing Committee of the respondent Corporation did not consider interest of the Corporation or public interest at the time when the final decision with regard to leasing of the plot in question was taken on 25th July 1997. The petitioners have submitted in the petition that value of the land in question is approximately Rs. 1 crore. Even if we do not believe the said valuation, it is crystal clear that rights of the legal heirs of late Shri Vajubha were transferred in favour of respondent No.6 for a sum of Rs. 4 lakhs. The said fact clearly reveals that the land has become much valuable at present and only because of increased value of the land in question, late Shri Vajubha was tempted to give an application so that he can take possession of the land in question and have legal rights in pursuance of an auction which had taken place on 7th November 1951.

23. We are of the view that the Councillors of the respondent Corporation were duty-bound to consider interest of the respondent Corporation before passing Resolution No. 185 of 25.7.1997 in pursuance of which the impugned order dated 30.7.1997 has been passed. We



are of the view that while taking any decision pertaining to public money or public property, members of the Standing Committee should act in a manner in which a prudent person and a trustee would act. The Councillors who are holders of public offices are duty bound to act as trustees of the properties of the Corporation as the residents of Bhavnagar had reposed their trust in them by electing them as Councillors but it is deplorable that the said Councillors functioned in a manner which would not benefit trustees. Holders of public offices are supposed to be more careful and cautious while dealing with public money and public properties as they are accountable to the public and their acting against the interest of public would amount to breach of trust reposed in them by the public. It is deplorable that the Councillors who are members of the Standing Committee did not look at the interest of the Corporation and residents of the Corporation while taking the impugned decision but perhaps only with an intention to do undue favour to late Shri Vajubha or his legal heirs the impugned decision was taken by them in spite of the fact that two earlier applications given by late Shri Vajubha on earlier occasions with regard to inclusion of his name in the lease register had been rejected by the respondent Corporation. In our opinion, the decision referred to hereinabove is not in the interest of the Corporation and the persons concerned with the process of taking decision have not acted fairly but have acted either in a careless and negligent manner or with an oblique motive of helping late Shri Vajubha.

24. If such an order is held to be legal and valid, the respondent Corporation would suffer substantial loss and would not be in a position to put up construction of a commercial complex on the plot in question as it was proposed in the past. As the decision with regard to accepting late Shri Vajubha as lessee was taken by the Standing Committee, it might be difficult for us to observe that the allegations levelled against respondent No.3 are correct. It, however, appears that the Standing Committee of the respondent Corporation has neither acted properly nor in the interest of the Corporation. Paramount interest of people has not been considered by the Standing Committee while passing Resolution No. 185 on 25th July 1997.

25. It is not in dispute that the petitioners are residents of Bhavnagar and they are taxpayers. By virtue of the impugned decision taken by the Corporation, substantial loss has been caused to the Corporation and, therefore, it cannot be said that the petitioners do not

have locus standi to challenge the impugned decision. We, therefore, hold that the petitioners have locus standi to challenge validity of the impugned decision.

26. In the above-referred circumstances, we are of the view that the impugned order dated 30th July 1997 passed by the respondent Corporation and Resolution No. 185 passed by the Standing Committee on 25th July 1997 are illegal and unjust and they are hereby quashed and set aside. As the said resolution is quashed and set aside, as a consequences thereof, legal heirs of late Shri Vajubha shall not get any right in respect of the land in question and their names, if entered in the register of lease maintained by the Corporation, shall be deleted from the lease register and no agreement of lease in respect of the land in question shall be entered into by the Corporation with the heirs of late Shri Vajubha. Needless to say that respondent No. 6 shall not get any right in respect of the land in question as the legal heirs of late Shri Vajubha are not having any right in respect of the land in question and, therefore, they could not have transferred or assigned any right to respondent No. 6 in respect of the land in question. The Corporation shall forthwith do the needful to take actual possession of the land if the possession has been given to anyone. The Corporation shall also see that nobody puts up any construction on the land in question.

27. Looking to the fact that the property belonging to the Corporation has been attempted to be disposed of against the interest of the Corporation in an improper and unjust manner, we direct respondent No. 4 to look into the matter and initiate appropriate proceedings against the concerned councillors of the Corporation under provisions of the Bombay Provincial Municipal Corporations Act, 1949. It is hoped that an appropriate decision to initiate action shall be taken within three weeks from the date of receipt this order by respondent No. 4.

28. In the result, the petition is allowed. Rule is made absolute with no order as to costs.

(K. Sreedharan, C.J.)

(A.R. Dave, J.)

(HN)

